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WRITTEN OPINION OF THE INTERNATIONAL SEARCH OFFICE

(SUPPLEMENTARY PAGE) International File No. PCT/DE2004/001187Re Point V

Reasoned statement with regard to novelty, inventive step, and industrial applicability; citations and explanations supporting this statement

1. Reference is made to the following documents:

- D1: US-A-5,951,633 (POLCYN MICHAEL J) September 14, 1999
(1999-09-14)
- D2: WO 97/22054 A (ERICSSON TELEFON AB L M; JENSEN LARS
ULRIK (SE)) June 19, 1997 (1997-06-19)

2.1 Taking into account the clarity objections with respect to Claim 1, described in Point VIII, it may be understood as follows within the framework of this reasoned statement:

A method for operating at least one telecommunication network, software for implementing switching operations of telecommunication connections and/or services running in a central server of the network; in the event of insufficient switching capacity of the switching centers, software is transmitted to at least one additional server of the telecommunication network at least intermittently and/or is activated therein at least intermittently.

In a broad, yet possible interpretation of this claim formulation, this method would correspond to a situation in which a network provider adds, for instance, an additional network element to the network in order to expand the network capacity, and installs the requisite

software therein. However, such a procedure is generally known to one skilled in the art, and - given such an interpretation - the subject matter of Claim 1 would thus not be novel within the meaning of Article 33(2) PCT. The subject matter of Claim 12 would likewise not be novel given a corresponding interpretation.

Taking into account the objective on which the present invention is based (description, page 2, l. 19 - 21), it becomes clear, however, that in the application at hand the capacity expansion is based on demand with respect to time and duration.

Moreover, the formulation of Claim 1 leaves open from which location the software is transmitted and what type of software is involved. The available description discloses various possibilities in this context (on page 3, for instance). Among these possibilities, the one where the software to be transmitted is *a copy of the software of the switching center having insufficient capacity* constitutes a technically specific variant (description page 3, l. 1 - 9). In the context of the remaining possibilities certain characteristics of the software to be transmitted are actually mentioned, but not, for instance, the source location in a transmission.

- 2.2 Although the features that correspond to the afore-discussed teaching of the present application are not explicitly included in Claim 1, document D1 is considered the most proximate related art in an interpretation of Claim 1 that takes these features into account.

Document D1 discloses (the references refer to this document) a method for operating at least one telecommunication network (col. 2, l. 32-35), software for implementing the switching of telecommunication

connections and/or services running in a standard resource of the network (col. 3, l. 30 - 39, and Fig. 1); in the event of insufficient switching capacity of the switching centers, software is activated at least intermittently in at least one overflow resource of the telecommunication network (col. 3, l. 39 - 41, and l. 49 - 52; col. 2, l. 43 - 51, as well as Claim 1).

The subject matter of Claim 1 differs from document D1 in that, i.) the standard resource is a central server, and ii.) the overflow resource is an additional server. Furthermore, Claim 1, due to the and/or combination, also includes the possibilities that alternatively to activating already available software, iii.) software is either transmitted intermittently or is transmitted and activated.

With regard to features i.) and ii.), it should be noted that servers are widely utilized resources in telecommunication networks. One skilled in the art, starting from the teaching disclosed in document D1, would apply the method described there also to resources in the form of servers.

In view of feature iii.), the objective to be achieved by the present invention may be seen in finding a way to use alternative network elements for services, even if they are not adapted for supplying the services.

The solution proposed in the present application, i.e., the transmission of software to other network elements, was already utilized in another method for maintaining operability, i.e., in the event of insufficient capacity due to the loss of a processor (cf. document D2, p. 10, l. 14 - 22, and Fig. 1 and 2). Having knowledge of this method known from D2, one skilled in the art would

consider the possibility of the software transmission described there as an obvious possibility for attaining the objective described above, without performing an inventive step in the process.

The present application does not satisfy the requirements of Article 33(1) PCT, because the subject matter of Claim 1 is not based on an inventive activity within the meaning of Article 33(3) PCT.

2.3 The same reasoning applies analogously to the independent Claim 12. The subject matter of Claim 12 is therefore not based on inventive activity (Article 33(3) PCT).

3.1 The dependent Claims 2-6 and 8-11 contain no features which, in combination with the features of any claim to which they relate, satisfy the requirements of the PCT with respect to novelty and inventive activity, as seen in light of the above-cited documents D1-D2 and the general knowledge of one skilled in the art. The reasons for this are as follows:

Claim 2: Running of the software in one or a plurality of processors is known from document D2 (p. 5, l. 20 - 24, and p. 14, l. 14 - 20).

Claim 3: D2 also discloses consideration of the available switching capacity (p. 10, l. 22 - 24).

Claim 4: If it is provided according to Claim 3 to consider the switching capacity within a network, then it is obvious to implement the selection among a plurality of networks as a function of available capacities as well.

Claim 5: Transmission of software packages, in the sense that one package includes a plurality of software objects, is known from document D2 (p. 10, l. 19 - 22).

Claim 6: Software packages that retransmit themselves over and over are known not only to one skilled in the art in connection with computer virus programs on the Internet.

Claim 8: Document D2 discloses a de-installation of the software when there is no longer any demand (p. 5, l. 32 - p. 6, l. 2).

Claim 9: Software for notifying a group of people (such as a voice group call or voice broadcast) is known to one skilled in the art.

Claim 10: The certification of software as a measure for "building trust" is generally known to one skilled in the art.

Claim 11: Switching software accessing a database of a telecommunication network is a common procedure in providing communication services.

- 3.2 The combination of features contained in dependent Claim 7 appears to be neither known from the available related art nor rendered obvious by it.

Re Point VIII

Specific Comments Regarding the International Application

The application does not satisfy the requirements of Article 6 PCT, because Claims 1, 6, 7, 8, 9 and 12 are not clear.

With regard to Claim 1, the term *organization* used in the formulation "method for operating and/or organizing at least one telecommunication network ..." has no clear meaning. While the terms *operation* and *maintenance* are well known in the related art, this is not true for the term 'organization'. The corresponding statement also applies with respect to the formulation "... Software for organizing and/or implementing switching operations ...",

where once again the delimitation between the terms organization and implementation is not altogether clear. In both cases, within the framework of this reasoned statement, the aspect of the organization is considered to be included either under [the aspect] of operation or that of implementation.

The characteristics mentioned in Claim 1, i.e., that it is a "switching center belonging to the network" and "the at least one additional selectable telecommunication network", do not constitute technical features.

Moreover, no technical feature can be gathered that is related to these provider relationships. If the software is able to be transmitted to a network element of an additional network, or if it is able to be activated there, then the mere assignment to the foreign network does not constitute a technical difference per se when compared to the situation where a network element of the own network would be involved. As a result, the characteristics indicating the provider relationships are not considered within the framework of this reasoned statement.

The Claims 1, 6, 7, 8, 9 and 12 are unclear due to the use of the term "in particular". This term does not effect any restriction of the protective scope of these claims, i.e., the feature following this term is to be considered entirely optional (cf. Guidelines Sec. 5.40).

Furthermore, by the feature "... to increase the switching capacity" in Claim 12 and also in Claim 1, it is attempted to define the subject matter of the claim by the result to be achieved, which results in a lack of clarity of the claim (PCT Guidelines Sec. 5.35).

In the term "software specific to the switching center" used in Claim 5, it is unclear in which sense the software obtains this switching-center-specific character and which technical features are affected thereby.

The present invention relates to a method for operating and/or organizing at least one telecommunication network (1, 3, 4), software for organizing and/or implementing of switching operations of telecommunication connections and/or services running in a central server of the at least one telecommunication network, in which, in the event of insufficient switching capacity of the switching centers (1) of the own network, software is at least intermittently transmitted to at least one additional server of at least one additional selectable telecommunication network (3, 4), and/or activated therein at least intermittently, in particular to increase the switching capacity. Furthermore, the present invention relates to a system for implementing the method.